



WORKING ASSETS®

DOCKET FILE COPY ORIGINAL

September 12, 1997

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

RE: CC Docket No. 94-129

TO THE COMMISSION:

Enclosed are an original and 11 copies of the "Comments of Working Assets Funding Service, Inc. on Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 & Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers (FCC 97-248)". If there are any questions please contact the undersigned at (415) 732-2084.

Sincerely,

Walter N. McGee
enc.

cc: Cathy Seidel, Common Carrier Bureau
Formal Complaints Branch
International Transcription Services

0811

Before the
Federal Communications Commission
Washington, DC 20554

CC Docket No. 94-129

Comments of Working Assets Funding Service, Inc. on
Implementation of the Subscriber Carrier Selection Changes Provisions of the
Telecommunications Act of 1996 & Policies and Rules Concerning Unauthorized
Changes of Consumers' Long Distance Carriers (FCC 97-248)

September 15, 1997

SUMMARY

Working Assets is a long distance reseller focusing primarily on residential customers. We also are testing offering local telephone service. Working Assets takes great care to ensure that we observe all relevant state and federal laws when signing up customers. Under the current system of verification rules generated separately by states and the federal government, compliance requires an unwieldy scheme of overlapping processes conforming to a variety of requirements. The FCC should strive for uniform verification requirements throughout the nation, to reduce costs to carriers, unnecessary delays in service provision, and confusion among consumers.

Companies like Working Assets, who do not bill through the LEC, have no incentive to slam consumers. Receiving a separate bill at their home, the customer knows immediately that service has been changed without authorization, and contacts the offending carrier, triggering costly and time-consuming escalation and resolution processes. The FCC's rules should take into regard that not all carriers are similarly situated in relation to slamming.

Working Assets commends the Federal Communications Commission ("FCC") for coupling its concern about slamming with attention to the need for flexible regulations. In addition to reducing the occurrence of slamming, regulations must support the move toward increased competition and ultimately the reduction of telecommunication costs. In that regard, Working Assets believes the Commission must work with the individual states as it fashions regulations meant to apply to intrastate service changes. Specifically, unless the FCC rules on carrier changes have the support of the states, individual states will render different rules of their own. Carriers will face, indeed, are now facing in some states, complying with two sets of rules. At some point such duplicity of regulations will be a barrier to entry for smaller carriers. It certainly acts as a counter to the ultimate goal of reducing telecommunication costs.

Working Assets presents its comments on the proposed rules and additional issues below.

I. PROPOSED AMENDMENTS TO FCC'S CURRENT PIC CHANGE RULES

The FCC recommends that what used to be called PIC change rules are now PC (Primary Carrier) change rules and apply to all changes of carrier, including local and intraLATA.

Working Assets applauds the FCC's attempt to apply a uniform set of regulations to all carrier changes. Because the overwhelming majority of carriers operate in more than one jurisdiction, regulations for different jurisdictions affect most carriers. Moreover, for carriers that offer both local and long distance service, the operations are similar, i.e., marketing to a customer for her/his interstate business goes hand-in-hand with marketing for intrastate business. The verification procedures set up by a carrier are done so with the intention of complying with rules for both state and federal jurisdictions using a single method. Having to set up multiple verification systems -- to comply with differing regulations -- increases costs significantly.

For example, Working Assets verifies some orders using an independent third party vendor, and others by means of a letter of agency ("LOA"). Current FCC rules allow carriers to use one of four methods to verify a customer's choice of long distance companies, including LOAs and third party verification. The FCC suggests that a customer's change order only be verified by one method and does not dictate which technique must be employed. Working Assets supports the flexibility this allows carriers in choosing the method that is most cost-effective for them, and that is most appropriate to a given marketing channel. Unfortunately, many states do not allow such flexibility, and have requirements that conflict with those in other states.

In Ohio, although the PUC allows more than one type of verification, it has declared that only LOAs will be acceptable evidence of complying with verification rules should a dispute arise¹. In California, the Legislature has required third party verification in almost every change of intrastate service, yet also has designated LOAs as the only binding evidence of compliance in case of a dispute². Working Assets must therefore

¹ In Case No. 96-1175-TP-ORD the Ohio Public Utilities Commission (OPC) decided that Section 4901 of the Ohio Administrative Code should be amended to require a carrier to render an LOA, no matter what type of verification had originally been used, as proof of verification in any carrier change dispute. In the absence of an LOA, the carrier will be deemed to not have complied with verification rules, even though other forms of verification are allowed by the Ohio Commission's rules. The OPC has temporarily stayed that decision.

² Section 2889.5 of the California Public Utilities Code states that every carrier change for a competitive telecommunications service must be verified by a third party vendor unless the change was instituted by the end user calling the local exchange carrier ("LEC") to have service changed to a carrier other than the LEC.

design a complicated verification system accommodating both requirements, as well as any other requirements imposed by states creating their own rules³. If customers are verified twice (LOA plus third party verification), the verification cost per customer enrolled increases by at least \$.75. Moreover, some customers do not respond to a second method of verification, avoiding contact with a third party verifier if they have submitted an LOA. To these customers, the multiple verification requirement may appear to be a ruse, designed to capture more aspects of service than the customer agreed to switch.

Unless the FCC's rules covering all carrier changes are accepted as the only rules applicable, their application to intrastate changes will be irrelevant. Without acceptance of the FCC standard by the individual state commissions, new rules would only complicate the market.

The FCC recommends that local carriers can be guilty of slamming if they implement a requested PC change incorrectly, and that carriers be required to negotiate if there is a dispute about whether the submission and/or implementation was incorrect.

Working Assets has no comments on this rule until we have some experience with such negotiations. If the FCC adopts a requirement for negotiation, it also should issue guidelines and timelines for doing so. Working Assets is particularly concerned about incumbent LECs and other carriers with large resources engaging smaller carriers in unnecessary negotiations.

Any telecommunications carrier that violates the verification procedures prescribed by the Commission and that collects charges for telecommunications service from a subscriber shall be liable to the subscriber's properly authorized carrier in an amount equal to all charges paid by such subscriber after such violation.

The Telecommunications Act of 1996 states that the unauthorized carrier is not entitled to keep the revenue gained through slamming, and that the unauthorized carrier is liable to the properly authorized carrier for all charges it collects from the subscriber. Working Assets strongly believes the manner in which the FCC implements the new regulation is important. Carriers should continue to have the option of not collecting charges from the slammed customer and therefore have no obligation to the authorized carrier when charges are not collected.

³ Georgia, North Carolina, and New York all have ongoing proceedings whose purpose in part or in whole is to consider carrier change rules for intrastate service.

Restoration of Premium Programs. Upon receiving from the unauthorized carrier the value of premiums to which the subscriber would have been entitled if the subscriber's selection had not been changed, the properly authorized carrier must provide or restore to the subscriber any premiums to which the subscriber would have been entitled if the subscriber's selection had not been changed. Where a particular premium cannot be restored, the properly authorized carrier may substitute an equivalent premium or dollar amount as reasonably determined by the properly authorized carrier.

Working Assets has no objection to making consumers whole by restoration of premiums -- if end users and/or authorized carriers act responsibly by notifying unauthorized carriers promptly.

However, Working Assets believes that no premium should be given if the customer is not charged for the service received by the non-authorized carrier. Obtaining service free of charge will compensate the customer adequately for the inconvenience of an unauthorized carrier change. If premium reimbursement is retained, in the rules, the FCC should provide some guidance on the costing of non-telecommunication premiums. Setting a cost, a methodology for determining cost, or a range of costs for the more common types of non-telecommunications premiums would help avoid disputes over the cost assigned to the premium by the authorized carrier. If that approach is unacceptable to the Commission, Working Assets suggests non-telecommunication premiums be reimbursed by one hour of free domestic toll calling on the authorized carrier's network. The cost, of course, would be paid by the unauthorized carrier.

With regard to requiring *gratis* provision of service to slammed customers, Working Assets believes the period of free service should be limited, at least for those carriers who issue their own bills. An end user who has been erroneously changed will receive a bill for the first billing period. At that first notification, the end user should notify the carrier of the mistake. Allowing a "two months of service refund" as a rule would provide enough time for erroneously-changed customers to contact the carrier and for the carrier to make the change. Working Assets believes the two month period is sufficient for any carrier who bills separately from the LEC. Even if the Commission finds that a longer period of liability should apply to carriers who use LEC billing, those who issue their own bills should be liable for customer charges for only two months. Giving customers unlimited months of free service will create an incentive for opportunistic end users to devise ways to take advantage of carriers.

Working Assets' goal is to have no customers erroneously changed to our service. However, in a fast-paced and technically complex marketplace, misunderstandings and unintentional errors inevitably occur. When provided timely notice, Working Assets, as a general policy, forgives reasonable charges incurred due to erroneous sign-ups.

Unlimited free service will undercut the motivation for timely action on the part of the end user.

Under current rules, Working Assets has seen customers linger on its service until their accounts are sent to collections, then claim the sign-up was not valid. Even where an LOA is on file, or another form of verification has occurred, Working Assets must engage in the costly process of responding to FCC/PSC complaints because the customer mistakenly believes that any unauthorized sign-up claim will yield free long distance service. The FCC should recognize that in some instances, "constructive acceptance" of service has occurred: i.e. the customer is fully cognizant that their service has been switched to another carrier -- sometimes with incomplete or faulty verification -- yet the customer does not notify the undesired carrier, and does not switch back to the carrier of their choice. After obtaining service for several months, the customer declines to pay, raising an unauthorized sign-up claim.

For example, one customer waited 4 months after the change and only notified Working Assets that she had not ordered our service when the account went to collections. The customer complained to both the state Public Utilities Commission and the FCC. Both agencies allowed Working Assets to pursue collections, recognizing that the customer's slamming claim was a pretext for seeking service free of charge.

Dispute Resolution. Carriers must pursue private settlement negotiations regarding the transfer of charges and the value of lost premiums from the unauthorized carrier to the properly authorized carrier prior to requesting that the Commission institute proceedings to resolve any dispute regarding such transfer of charges and the value of lost premiums.

Again, Working Assets has no response to this rule until it has participated in such negotiations.

The FCC is proposing to discontinue the "welcome package" as an acceptable means of verification.

Working Assets does not object to the discontinuance of the "welcome package" as a means of carrier change verification.

The FCC proposes to apply verification rules to inbound calls.

Having serviced over 500,000 long distance accounts without use of in-bound verification, Working Assets has never received a complaint or allegation regarding an unauthorized in-bound sale. Working Assets recognizes that the in-bound sales environment may pose risks, but believes that if a carrier voluntarily avoids those

marketing strategies that create risk of abuse, that carrier should not be encumbered with unnecessary verification requirements. Therefore, Working Assets submits that in-bound verification requirements should apply only to carriers who utilize contests, sweepstakes advertisements, or other incentives that overshadow the offer of telecommunications services to encourage customers to make in-bound calls, or in situations where bundled service offerings (e.g., local and long distance) are being offered. With verification rules tailored to target potentially abusive practices, carriers can make the choice of incurring the additional cost of in-bound verification or not.

III ADDITIONAL COMMENTS:

IDENTIFICATION OF UNDERLYING CARRIER: The Telecommunications Resellers Association has suggested that the FCC establish a "bright-line" evidentiary standard for determining whether a subscriber has relied on a resale carrier's identity of its underlying facilities-based network provider, hence requiring that the resale carrier notify the subscriber if the underlying network provider is changed. Any policy on this subject should not impose upon those resellers who do not market the identity of their underlying carriers a requirement to disclose any change or addition of underlying carriers. Otherwise, Working Assets submits that any requirements about notification could hinder business relationships between those companies. For example, Working Assets' contract with our underlying carrier specifically prohibits us from using that carrier's name in our marketing efforts. The relationship can be disclosed if a facilities-based service problem interferes with service provision.. However, a requirement to include this information in our marketing materials would violate our existing contract, and would pose a potentially insurmountable barrier to future resale agreements.

LECs SERVING AS BOTH SUBMITTING CARRIER AND EXECUTING CARRIER FOR CHANGES IN TELECOMMUNICATIONS SERVICE: As the local telephone market becomes more competitive, Working Assets is concerned that the incumbent local exchange carriers not be given *carte blanche* to assess fees against their competitors.

A recent California rulemaking proposes requiring an independent firm to process all PC changes. However, the expense of such a requirement would gravely outweigh any potential benefits, and the process would be duplicative and time-consuming. Moreover, creating another level of order-processing opens up opportunities for technical malfunctions affecting consumers' telecommunications services.

PC FREEZES: Only customers should be allowed to order PC freezes, since the potential for abuse in allowing carriers to order PIC freezes "on behalf of" customers gravely outweighs any competitive benefit to allowing carriers make PC freezes on behalf of the customer.